

EX PARTE OR LATE FILED

DOCKET FILE COPY ORIGINAL

VINCENT A. PEPPER
ROBERT F. CORAZZINI
PETER GUTMANN
JOHN F. GARZIGLIA
NEAL J. FRIEDMAN
ELLEN S. MANDELL
HOWARD J. BARR
LOUISE CYBULSKI *
JENNIFER L. RICHTER *

PEPPER & CORAZZINI

ATTORNEYS AT LAW
200 MONTGOMERY BUILDING
1776 K STREET, NORTHWEST
WASHINGTON, D. C. 20006
(202) 296-0600

ROBERT LEWIS THOMPSON
GREGG P. SKALL
E. THEODORE MALLYCK
OF COUNSEL
FREDERICK W. FORD
1908-1986
TELECOPIER (202) 296-5572

November 19, 1993

RECEIVED

NOV 19 1993

Mr. William F. Caton
Secretary
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

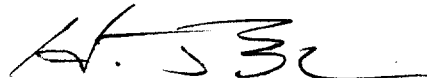
Re: **Ex Parte Filing**
Implementation of the Cable Television
Consumer Protection Act of 1992 -- Broadcast
Signal Carriage Issues
NM Docket No. 92-259

Dear Mr. Caton:

Transmitted herewith on behalf of Brockway Television, Inc. ("Brockway"), is an original and nine (9) copies of its Supplemental Comments to Petitions for Reconsideration in the above-referenced proceeding concerning the need for multichannel video program distributors to obtain consent prior to the retransmission of a broadcast signal. As set forth therein, Brockway believes that non-profit subscriber owned cable systems should not be required to compensate television stations for the use of their signals. Such a requirement will cause cable subscribers to suffer a reduction in service.

Should any questions arise in connection with this matter, kindly contact the undersigned.

Respectfully submitted,



Howard J. Barr

Enclosures

No. of Copies rec'd
List ABCDE

049

NOV 19 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
)
 IMPLEMENTATION OF THE)
 CABLE TELEVISION)
)
 CONSUMER PROTECTION AND)
 COMPETITION ACT OF 1992)
)
 Broadcast Signal Carriage Issues)

MM Docket No. 92-259

To: The Commission

SUPPLEMENTAL COMMENTS TO PETITIONS FOR RECONSIDERATION

Brockway Television, Inc. ("Brockway"), by counsel, hereby submits its Supplemental Comments to Petitions for Reconsideration in the above-captioned proceeding concerning the need for multichannel video program distributors to obtain consent prior to the retransmission of a broadcast signal. Specifically, Brockway seeks a ruling that non-profit entities should be exempt from having to compensate broadcast stations in consideration of their consent to carriage. The following is shown in support thereof:

Brockway is a small non-profit cable system serving approximately 1,400 subscribers in the small community of Brockway Borough, Pennsylvania. The system is owned by its subscribers. Its Board of Directors are appointed by the Brockway Borough Council, an elected body. Nearly all television stations entitled to must carry rights vis a vis Brockway elected to assert those rights or have granted retransmission consent without requiring monetary compensation. At least two stations, however,

have withheld consent (though extensions have been granted), seeking retransmission consent fees in return for consent.

The recent round of retransmission consent negotiations demonstrated the undue hardship new Section 325(b)(1)^{1/} has placed on small cable systems. While large MSOs, almost without exception, avoided paying for consent, television stations often extracted cash compensation for consent from small independent systems, i.e., those without the market influence to just say no and those least able to incorporate significant new expenses in this era of rate regulation. Small non-profit cable systems such as Brockway are even less able to incur such new costs than similarly sized for profit cable systems.

Brockway does not compete with local television signals for programming or advertising. Additionally, Congress' subsidy analysis loses sway given Brockway's status as a non-profit cable system owned by its subscribers. Brockway is without the economic incentive to terminate the transmission of a broadcast signal since it is a non-profit, and thereby non-competitive, organization. Indeed, the benefit Brockway provides to the television stations carried -- in terms of assisting the broadcaster to extend its reach and increase its viewership and advertising revenues -- far exceeds any benefit Brockway receives from that carriage. Thus, Congress' concern about cable systems exerting market power over broadcasters or enjoying a competitive imbalance over broadcasters is overbroad as applied to non-profit

^{1/} 47 U.S.C. §325(b)(1).

systems such as Brockway. See Conference Report No. 862, 102d Congress, 2d Sess. at p.58.

The ruling requested herein does not require the Commission to waive a statutory provision, an action the Commission is without authority to take. Rather, the request is more in the nature of a request for a policy statement, such as the Commission's statement concerning the unreasonableness of a network television stations denial of consent in a market where it has no local affiliate. Alternatively, the Commission could choose not to enforce the retransmission consent requirement when small non-profit cable systems are the retransmitters.

Wherefore, the premises considered, Brockway seeks a ruling that non-profit entities should be exempt from having to compensate broadcast stations in consideration of their consent to carriage.

Respectfully submitted,
BROCKWAY TELEVISION, INC.

By


Howard J. Barr
Its Attorney

PEPPER & CORAZZINI
1776 K Street, N.W., Suite 200
Washington, D.C. 20006
(202) 296-0600

November 19, 1993

HJB/de
c:\wp\973\Comments.HJB